SUPREME COURT, U. S.

Nos. 73-550, 73-867, 73-868, 73-871, 73-872, 73-874

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

TEXASGULF INC.
LOUISIANA POWER & LIGHT COMPANY
LOUISIANA GAS SERVICE COMPANY
EXXON CORPORATION AND TEXACO INC.
STATE OF LOUISIANA, ET. AL.
NEW ORLEANS PUBLIC SERVICE INC.,
Petitioners

v.

FEDERAL POWER COMMISSION,
Respondent

BRIEF OF UNITED GAS PIPE LINE COMPANY IN OPPOSITION TO MULTIPLE PETITIONS FOR WRIT OF CERTIORARI

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OPINIONS BELOW

The opinion of the Court of Appeals is reported at 483 F.2d 623, *rehearing denied*, 483 F.2d 1404.

QUESTIONS PRESENTED

1. Is an interstate pipeline selling and transporting natural gas in interstate commerce within the meaning of Section 1(b) of the Natural Gas Act when the gas being sold and transported has been diverted from a commingled stream of gas destined in major part for out-of-state markets?

2. May the facilities used by an interstate pipeline for transportation or sale in interstate commerce of natural gas be exempted from Federal Power Commission jurisdiction by Section 1(c) of the Natural Gas Act (Hinshaw Amendment) when the *other-person* requirement is not met and the State Commission does not regulate direct-sale service?

STATEMENT

These cases involve the jurisdiction of the Federal Power Commission (Commission) over transportation and sale for resale of natural gas diverted from a commingled stream destined in major part for out-of-state markets. In a proceeding initiated by United Gas Pipe Line Company (United) (R. 1760-2047; A. 199)[1] in response to an inquiry from the Commission (Ref. Item B; R. 217, 219),[2] the Commission determined that it had jurisdiction over such transportation and sales. 47 F.P.C. 245. In a statutory review proceeding pursuant to Section 19(b) of the Natural Gas Act (the Act), 15 U.S.C. § 717r(b), the Court of Appeals, relying on the *Lo-Vaca*[3] and *Amerada*[4] decisions of this Court and its own *Florida Parishes*[5] decision, upheld Commission jurisdiction. 483 F.2d 623.

United, a natural gas company subject to the Commission's jurisdiction, operates interstate gas transmission

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[1] *R.* refers to the Certificate of Record in Lieu of Record filed by the Commission in the Court of Appeals. *A.* refers to the printed Joint Appendix prepared by the parties in connection with the review proceeding in the Court of Appeals.

[2] The dual references which follow United's citation of exhibits refer first to the page in the Certificate of Record in Lieu of Record where the exhibit was introduced and second to the page where the exhibit appears in the record.

[3] *California* v. *Lo-Vaca Gathering Co.*, 379 U.S. 366.

[4] *FPC* v. *Amerada Petroleum Corp.*, 379 U.S. 687.

[5] *Louisiana Public Service Comm'n* v. *FPC*, 359 F.2d 525 (5th Cir. 1966), *cert. denied*, 385 U.S. 833.

facilities in Texas, Louisiana, Alabama, Mississippi and Florida (R. 1761-62), and, through connections with other major interstate gas transmission companies (R. 1762), supplies much of the gas used in the eastern half of the United States. The bulk of United's sales, service and facilities has long been regulated by the Commission. If the Commission's jurisdictional determination in Opinion 610 is upheld, all of United's sales, service and facilities will be regulated by the Commission.

The Louisiana facilities involved in this case are located entirely in southern Louisiana south of Marksville (Ex. 1; R. 107, 1319; A. 137)[6] in an area crisscrossed by United's main certificated interstate gas transmission facilities which are moving both onshore and offshore gas to markets outside Louisiana (R. 532-35). The disputed facilities[7] are not only contiguous to and interconnected with these main transmission lines (Ex. 1; R. 107, 1319; A. 137), but also

[6] Exhibit 1 is a system-wide map of United's natural gas properties which shows the relationship of the Louisiana facilities involved to United's certificated facilities. The facilities shown on Exhibit 1 are color coded in order to distinguish United's certificated facilities (shown in black) from United's other facilities in Louisiana (shown in purple and green). The facilities shown in purple serve an area denominated by United as its Lafayette District service area; the facilities shown in green serve an area denominated by United as its New Orleans District service area. The total area served by these Louisiana facilities (denominated by United as its New Orleans Division) is left unshaded on Exhibit 1.

[7] The eastern portion of United's New Orleans District facilities, arbitrarily named Green System-East or Green-East by some petitioners, are the only facilities whose interstate character remains in dispute. The remainder of the New Orleans District facilities (Green-West), the Lafayette District facilities and United's Victoria (Texas) facilities are all now conceded to be interstate. The only question which remains with respect to these latter facilities is the appropriateness of the Court of Appeals' refusal to Hinshaw the New Orleans and Lafayette facilities; no one has ever contended that the Victoria facilities could be Hinshawed.

are part of a fully integrated pipeline system by means of which United transports and sells gas from the states of Texas, Louisiana and Mississippi to industrial customers, pipelines and local distributors in these states and in Alabama and Florida (R. 88-89).

Some of the disputed facilities were covered by United's grandfather certificate issued in *United Gas Pipe Line Co.*, 3 F.P.C. 863, and from 1942 to 1954 these facilities were regulated by the Commission. For a period of time after 1954, pursuant to a settlement in one of United's rate cases, *United Gas Pipe Line Co.*, 13 F.P.C. 398, the Commission exercised no jurisdiction over the disputed facilities.

In 1965, because of a dwindling local supply and an escalating demand in the area served by the Louisiana facilities, interstate gas began flowing into those facilities (Ex. 30, R. 435, 1420; A. 194). As a result of continuing consultation between United and the Commission Staff which began shortly after *Florida Parishes* (R. 18), United undertook studies designed to determine whether the facilities being supported by these interstate flows were jurisdictional. The initial picture was confusing, and the substantial long-term dependency of the customers served by the Louisiana facilities was not immediately apparent. When, in 1970, United's studies revealed that customers served by these facilities were going to be substantially dependent on interstate gas for some time to come,[8] United filed an application (R. 1760-

[8] The uncertificated reserves dedicated to Green-East are rapidly declining and the Green-East demand is swiftly rising (Exhibit 3; R. 107, 1324-25; A. 142). By 1969 these trends had produced an annual deficit in Green-East of 5.4 million Mcf which was met by diversions of gas from interstate streams headed for out-of-state markets through Points I and J (Table, App. A, *infra*, at 17). For the year 1969, 2.69 percent of the 200.6 million Mcf demand in Green-East was met with interstate gas (Exhibit 3, at 2).

The deficiency is much greater on peak days. United estimated and the Commission found, 47 F.P.C. 245, 255, a 1971-72

2047; A. 199) requesting a certificate, pursuant to Section 7(c) of the Act, covering the sales, service and facilities involved.[9] Following the issuance of its customary notice (R. 2048-49), the Commission conducted exhaustive hearings (R. 1-1276) during which 63 Exhibits (R. 1319-1493) and 10 Items By Reference (R. 217, 1494-1759, 1796, 1830-2042) were received in evidence. Thereafter on July 2, 1971 the Commission, conscious of the interrelationship between this certificate proceeding and United's curtailment proceeding (R. 2447) and doubtless mindful of the collateral attack on its jurisdiction being pursued by LPL in the courts,[10] waived the intermediate decision of the examiner (R. 2446-50) and took the proceeding under advisement.

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peak-day New Orleans District demand of 1,002,000 Mcf and a local supply of only 413,000 Mcf, leaving 58.7 percent (589,000 Mcf) to come from interstate sources. United further estimated and the Commission found, 47 F.P.C. 245, 255-56, that 684,000 Mcf of the 1,018,000 Mcf demand for the 1972-73 peak day would have to come from interstate sources, leaving the New Orleans District dependent on interstate gas for 67.2 percent of peak-day requirements.

[9] The record does not contain a shred of evidence to support the innuendo that United filed the application in order to get out of improvident contracts. Because of the universally recognized gas shortage, the only gas available to meet the supply deficiency in Green-East is interstate gas; with interstate gas comes federal regulation including the requirement that United file a Section 7(c) certificate application if it wishes to continue the service. The requested certificates have been granted. *United Gas Pipe Line Co.*, Dkt. No. CP71-89 (FPC, July 20, 1973) (Opinion 661). Three proceedings to review Opinion 661 are pending in the Court of Appeals. *State of Louisiana, et al.* v. *FPC*, No. 73-1994 (D.C. Cir., filed Sept. 17, 1973); *Exxon Corporation* v. *FPC*, No. 73-2004 (D.C. Cir., filed Sept. 20, 1973); *International Paper Co.* v. *FPC*, No. 73-2146 (D.C. Cir., filed Nov. 7, 1973).

[10] On June 30, 1971 LPL filed notice of appeal from the judgment of the District Court dismissing its collateral injunction proceeding, *Louisiana Power & Light Co.* v. *United Gas Pipe Line Co.*, 332 F.Supp. 692 (W.D. La. 1971), *rev'd*, 456 F.2d 326 (5th Cir. 1972), *rev'd sub nom.*, *FPC* v. *Louisiana Power & Light Co.*, 406 U.S. 621, and moved to stay the judgment of the District Court.

On February 9, 1972, the Commission issued Opinion 610, 47 F.P.C. 245, finding that the sales, service and facilities involved are subject to Commission regulation because of interstate gas flows in the facilities, 47 F.P.C. 245, 249-63. The Commission determined that Section 1(c) did not affect its jurisdiction because the Louisiana Commission has no direct-sale curtailment (service) jurisdiction, 47 F.P.C. 245, 260-61, and the gas involved is not being purchased from another person but is simply flowing from one portion of United's system to another. 47 F.P.C. 245, 261.

On statutory review, the Court of Appeals affirmed, holding that the Commission's application of the commingling authorities to a fact situation involving diversions of gas into the facilities from a stream headed for out-of-state markets in volumes that are substantial, fairly constant, likely to continue, and necessary to meet demand in the Louisiana facilities, was supportable under the rational basis test as articulated by this Court in *NLRB* v. *United Insurance Co.*, 390 U.S. 254, 260. 483 F.2d 623, 630-32. The Court of Appeals also held that the facilities were not exempt from Commission jurisdiction under Section 1(c) as the *other-person* requirement was not met at the points of interconnection between United's certificated interstate facilities and the facilities petitioners claim are exempt. 483 F.2d 623, 633-34. Having thus disposed of the Hinshaw issue, the Court of Appeals did not consider the other grounds relied on by the Commission in declining to apply Section 1(c). 483 F.2d 623, 634 n.7.

SUMMARY OF REASONS FOR DENYING CERTIORARI

The arguments concerning the interstate character of the Green-East facilities are entirely factual in nature.[11] As the

[11] The argument of some petitioners about the flows at Points I

fact of commingling is established, [12] the legal result is controlled by *Lo-Vaca* and *Amerada*.[13]

The Hinshaw Amendment was carefully drawn to eliminate the duplicate regulation resulting from this Court's decision in *FPC* v. *East Ohio Gas Co.*, 338 U.S. 464, without in any way diminishing the ability of the Commission to control interstate pipeline activities which cannot be effectively regulated by the State Commissions. The Court of Appeals' insistence that the gas involved be received from another person at the point of interconnection between United's certificated facilities and the facilities which petitioners seek to exempt insures that only companies *similarly situated*[14] to East Ohio will be exempted. As this reading of Hinshaw leaves United's substantial industrial volumes under Commission curtailment jurisdiction, thereby responding to the Congressional concern that activities affecting more than one state not be exempted, the result is clearly correct.

The complaint about Commission examination of the March 3, 1971 flow diagrams is frivolous as the diagrams that were in the record had not been challenged and the March 3, 1971 diagrams were inspected for the limited purpose of checking the accuracy of the diagrams that were in the record.

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and J, although primarily designed to demonstrate that the other person requirement has been met (note 20, *infra*, at 12), demonstrates the factual nature of the jurisdictional issue.

[12] Indeed, Texasgulf (Pet. 5) and Exxon/Texaco (Pet. 5) concede that commingling occurs.

[13] The possibility of a separate non-jurisdictional transaction reserved by this court in *Lo-Vaca*, 379 U.S. 366, 370, is not presented on this record. The argument here, as in *Amerada*, is whether the transactions are *in interstate commerce*, not whether the sales are resale or direct.

[14] Two petitioners (Exxon/Texaco Pet. 7 n.10) inadvertantly acknowledge that unless the activities of United are physically similar to those of East Ohio, an exemption would be improper.

REASONS FOR DENYING CERTIORARI

1. The jurisdictionality of the Green-East facilities turns solely upon an analysis of the operating facts in those facilities as the legal effect of commingling has been settled by *Lo-Vaca* and *Amerada*. This Court does not grant ". . . certiorari to review evidence and discuss specific facts," *United States* v. *Johnston*, 268 U.S. 220, 227.

Only three petitioners dispute the interstate character of the Green-East facilities. None disputes the following facts. At twelve of the twenty-four points of interconnection shown on Exhibit 1, substantial quantities of interstate gas flow into the uncertificated facilities (Tables, App. A and B, *infra*, at 17-18). A portion of these interstate gas deliveries are made to the Louisiana facilities from United's Lirette - Mobile and Napoleonville - Kosciusko interstate transmission lines carrying gas, produced both onshore and offshore Louisiana, to out-of-state markets (R. 532-34). Thus some of the gas moved in the Lirette-Mobile-Napoleonville-Kosciusko and other lines is sold in Louisiana for ultimate Louisiana consumption, and the balance is transported to other states for sale and consumption there (R. 85). The gas sold in Louisiana is intermixed during transportation with that sold in out-of-state markets (R. 85). The channel of constant flow in the lines from which gas is taken for Louisiana markets is out of state (Ex. Z-1; R. 2044-45).

Rather, petitioners attempt to distinguish the facts of this case from the *Lo-Vaca* and *Amerada* facts by arguing that the diverted gas (gas taken from the interstate stream) was produced, transported and consumed wholly within the State of Louisiana and that once diverted, the channel of constant flow of the gas in the Green-East facilities is local. Neither of these arguments has any jurisdictional signific-

ance. The gas involved in *Lo-Vaca* and *Amerada*, once diverted, may be described as produced, transported and consumed wholly within one state. Indeed one of the contracts involved in *Lo-Vaca* obligated the pipeline to use the gas it took as boiler and compressor fuel *in Texas*. 379 U.S. 366,368. Likewise, under the *Lo-Vaca* and *Amerada* facts one could find a channel of constant intrastate flow if one ignored the main-line flows.

2. The Court of Appeals' interpretation of the other-person requirement of the Hinshaw Amendment is correct; indeed any other resolution of the Hinshaw issue would seriously impair the Commission's ability to protect residential consumers dependent upon United by permitting LPL and other large industrial, boiler-fuel users[15] to escape Commission curtailment jurisdiction.

Those who argue for a Hinshaw exemption take one of two approaches. They either (1) contend that the person-to-person exchange need only take place within Louisiana (and thus, the Court of Appeals' requirement that the exchange take place at the point of interconnection is too restrictive) or (2) argue that the Commission has not insisted on the *other-person* requirement in other Hinshaw situations. Neither contention has any merit. [16]

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[15] *E.g.*, Texasgulf Inc. and NOPSI. NOPSI is also a gas distribution customer.

[16] The vague suggestions of some that the opinion of the Court of Appeals will jeopardize other Hinshaw exemptions, require duplication of facilities and hamper the ability of the industry to respond to the acknowledged nation-wide gas shortage are ill-founded. The eastern consumer interests, represented in the Court of Appeals by the Public Service Commission of the State of New York, fear no such consequences; the New York Commission supported Opinion 610, including the Hinshaw result.

The concern voiced by Exxon and Texaco that only gas distribution companies can be exempted under the Court of Appeals opinion is likewise without basis. The fact situations

In order to understand Hinshaw one must recall this Court's observation in *Illinois Natural Gas Co.* v. *Central Illinois Public Serv. Co.*, 314 U.S. 498, 506, that the Natural Gas Act was passed in order to regulate activities of the interstate pipelines which this Court had determined to be beyond the power of the states to regulate.[17] As the Gas Act jurisdiction was as broad as *interstate commerce*, this Court in *FPC* v. *East Ohio Gas Co.*, 338 U.S. 464, found Commission jurisdiction under the Act to regulate activities of East Ohio which, under the earlier decisions, the Ohio Commission could regulate and was in fact regulating. Thus, as a result of *East Ohio Gas*, certain activities of interstate pipelines which had been and could be effectively regulated by the state commissions were now subject to regulation by both the state and the federal commissions. The legislative history makes clear that Hinshaw was an attempt to deal with this problem (duplicate regulation) without at the same time removing from federal regulation any of the activities which the states could not effectively regulate. In the FPC Report on H.R. 5976, the bill which ultimately became Section 1(c) of the act, the Commission stated:[18]

> The Supreme Court in F.P.C. v. East Ohio Gas Co. (338 U.S. 464, 70 S. Ct. 266 (1950)) held that the East Ohio Gas Co. was within the jurisdiction of the Commission under the Natural Gas Act, because its operations are in fact in interstate commerce. This bill would grant exemption to companies *similarly situated*

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of the cases they rely on (notes 24-25, *infra*) demonstrate that pipelines *which meet the Hinshaw test* have been and will be exempt.

[17] *E.g.*, *Missouri ex rel. Barrett* v. *Kansas Natural Gas Co.*, 265 U.S. 298; *cf. Pub. Util. Comm'n of Rhode Island* v. *Attleboro Steam & Electric Co.*, 273 U.S. 83.

[18] FPC Rep. on H.R.5976, 83d Cong., 2d Sess. (1954); 1954 U.S. Cong. & Adm. News 2103, 2104.

and declare their operations within a single State to be primarily of local concern.

> The applicability of the Natural Gas Act to companies in the East Ohio Gas Co. category has resulted in some duplication of State and Federal regulation. While the examinations of the Commission do not show that the cost to individual companies of duplicative regulation has been excessive in direct outlays, nevertheless the elimination of any overlapping is desirable. No good purpose is seen for the imposition of federal regulation in addition to that provided under State laws *where only one State is affected*, and the futility of duplication was pointed out in our Opinion No. 216, July 17, 1951 (Texas Illinois Natural Gas Pipeline Co.). At that time we expressed the hope that Congress would see fit to enact remedial legislation *covering the East Ohio* situation. We repeat that hope. (Emphasis supplied.)

The Senate report on the same bill[19] included a portion of the preceding quotation and then stated:

> Specifically this legislation proposes to amend the Natural Gas Act by adding to section 1 a new subsection (c) providing, subject to certain specified conditions, that a company shall not be subject to the act by reason of the fact that it is engaged in the transportation, within a State of *out-of-State* natural gas received within or at the State border or by reason of the fact that it sells, either to local distributing companies or to companies for resale and ultimate consumption within that State, *out-of-State* natural gas received by it within or at the State border. . . . (Emphasis supplied.)

Congress responded to this dual concern by carefully tailoring an exemption of companies *similarly situated* to East Ohio. A brief comparison of East Ohio's situation with

[19] Sen. Rep. No. 817, 83d Cong., 2d Sess. (1954); 1954 U.S. Cong. & Adm. News 2101, 2102.

that of United convinces that Congress could not possibly have intended that Hinshaw apply to the situation presented on this record. In *East Ohio Gas*, East Ohio was at the other end of the interstate transmission network. It received gas (from jurisdictional pipelines like United) which had crossed into Ohio from other states and distributed that gas along with other gas in Ohio. As it made no sales for resale it contended that it was not a jurisdictional pipeline under Section 1(b). This Court held that it was because it was transporting gas in interstate commerce.

United, on the other hand, is at the base of a network of interstate transmission lines which serve the eastern half of the United States. The facilities sought to be exempted are being operated along with United's certificated facilities as an integrated pipeline system by means of which United conducts a multi-state gas transmission business. At the points of interconnection between United's certificated facilities and the facilities which petitioners claim are exempt, no gas is being received; rather gas which already belongs to United is simply flowing from one portion of United's system to another.[20]

In addition to being differently situated, United conducts operations in Louisiana which clearly *affect more than one state*.[21] Currently, United's deliveries to customers served by the Louisiana facilities are being made subject to United's curtailment plan filed with the Commission. 47 F.P.C. 245, 268. If the Louisiana facilities are Hinshawed, the Commission's curtailment authority over substantial industrial volumes will be destroyed, leaving a regulatory

[20] If one attempts to satisfy the person-to-person requirement by pointing to producer transfers or deliveries at the tailgate of processing plants, one cannot meet the requirement that all of the gas so received is then consumed within Louisiana.

[21] The Commission attached much importance to this factor at the time Hinshaw was being considered. Text, *supra*, at 11.

gap which the Louisiana Commission cannot fill. *FPC* v. *Louisiana Power & Light Co.*, 406 U.S. 621.

Nor can curtailment problems be solved by controlling deliveries at the point of interconnection between United's certificated facilities and the disputed facilities. As this Court recognized in *Louisiana Power*, 406 U.S. 621, 633 n.11, the Louisiana Commission has no jurisdiction over any aspect of direct sale *service*.[22] Thus, although the Commission might order United to deliver a certain quantity of gas into Green-East to meet human needs and other demands having a higher priority than LPL's boiler-fuel requirements, neither the Commission nor the Louisiana Commission could ensure that the gas so delivered ever reached those higher priority customers.[23]

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[22] La. Const. Art. 6, § 4. No petitioner disputes the Commission's position, 47 F.P.C. 245, 260 n.10, that it received a disclaimer of direct sale jurisdiction from the Louisiana Commission.

[23] The disastrous impact of an exemption on the Commission's curtailment authority confirms the wisdom of the Commission's position, not reached by the Court of Appeals, 483 F.2d 623, 634 n. 7, that exemption would be improper because the Louisiana Commission has no jurisdiction over direct-sale service. This position is well grounded in legislative history. At 99 Cong. Rec. 10563, the following exchange occurred:

> Mr. Yates. Will the gentleman state whether the term "rates" as used there means all the rates of a company, including retail and wholesale rates or one or the other? Does it mean all types of *service*? Does it include the abandonment of *service*? What is the intent of the bill in that respect?
>
> Mr. Hinshaw. That was an amendment proposed by the Federal Power Commission and so far as I am able to determine, and I believe accurately, it includes all sales and *services*.
>
> Mr. Yates. Mr. Chairman, will the gentleman yield further?
>
> Mr. Hinshaw. I yield.
>
> Mr. Yates. In other words, what the gentleman has said is that in order for a company to be exempted from Federal regulation all of its rates and all of its *service* would have to be subject to the regulation of the State regulatory agency in order for that company to be exempt; is that correct?
>
> Mr. Hinshaw. In respect to natural gas, yes; that is my understanding. (Emphasis supplied.)

Those who contend that the Commission, in its administration of Hinshaw, has not insisted on the *other-person* requirement and has on previous occasions exempted portions of an integrated interstate system, rely on cases which simply do not support the contention. The Commission has never exempted a branch of an integrated pipeline system.[24] Nor has the Commission ever relaxed the requirement that the gas be received from another person.[25]

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[24] The gas sold by United to the Town of Gueydan, *United Gas Pipe Line Co.*, 35 F.P.C. 172, is purchased from Transcontinental Gas Pipeline Corporation and delivered through a line which runs from Transco's facilities to the Town of Gueydan and nowhere else. As the Louisiana Commission regulates resale service, all of the Hinshaw requirements are met. The system involved in *Pennzoil Pipeline Co.*, 44 F.P.C. 291, was properly exempted as the *other-person* requirement is met and the Texas Commission regulates both resale and direct service.

Although it is not clear from the order referred to in the State's petition, *Columbia Gas of West Virginia, Inc.*, 44 F.P.C. 1260 (Oct. 20, 1970), the prior certificate opinion, *United Fuel Gas Co., et al.*, 44 F.P.C. 1051, makes clear that the *other-person* requirement was met. As the West Virginia Commission was regulating the rates, *service* and facilities of *Columbia Gas of West Virginia, Inc.*, 44 F.P.C. 1260, 1261, the system there involved was properly exempted.

Michigan Consolidated Gas Co., 46 F.P.C. 658, involved Hinshaw only incidentally. Michigan Wisconsin Pipeline was seeking a Section 7 certificate authorizing an exchange of gas with Michigan Consolidated, a company which had previously been exempted under Section 1(c). In disposing of the exchange application, the Commission simply reaffirmed Michigan Consolidated's exemption.

[25] Any fair reading of the initial decision of the examiner, 42 F.P.C. 310, 314-16, adopted by the Commission in *Mountain Gas Co.*, 42 F.P.C. 305, makes clear that all of the *jurisdictional gas* there involved was received from another person. 42 F.P.C. 316.

Nor does *Utah Gas Service Co.*, 38 F.P.C. 1219, stand for that proposition. As is clear from the opinion which originally granted the exemption to Mountain Fuel, *Mountain Fuel Supply Co.*, 32 F.P.C. 535, 536, the intrastate Orem-Uintah Basin Pipeline which was there exempted was not interconnected with Mountain Fuel's interstate facility.

3. The issue relating to Commission examination of the March 3, 1971 peak day flow diagrams presents no substantial question for review.[26] No one disputes that Section 5(e) of the Administrative Procedure Act, 5 U.S.C. § 556(e), authorizes the examination by the Commission of these diagrams, filed by United in accordance with Section 260.8 of the Commission Regulations. Rather the apparent complaint is that the Commission erred in trying to *understand* the diagrams and more importantly in using them to verify the actual and estimated flows that *were in the record.*

The complaint, in this connection, that petitioners did not have an opportunity to cross-examine the diagrams themselves (that is, the splits at identifiable points, the directions and the volumes) is patently frivolous. During the ten days of formal evidentiary hearings, not a single party challenged that information with respect to any of the flow diagrams that were in evidence.[27] And even if one accepts Commissioner Carver's suggestion, 47 F.P.C. 1021, 1025, that the Commission received *ex parte* interpretations of the diagrams which it then used to support a conclusion that some molecules of gas went from the Green-East facilities out of state, the receipt of those interpretations was harmless. Neither the Commission nor the Court of Appeals relied on the ability to trace some gas from the Green-East facilities across the state line. Once it is established, as it

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[26] Of the two petitioners who brief this issue, only the State is in a position to raise it. LPL is precluded by Section 19(b), 15 U.S.C. § 717r(b), from urging the point because it did not urge it in its petition for rehearing before the Commission (R. 3425-27). *FPC* v. *Colorado Interstate Gas Co.*, 348 U.S. 492.

[27] The problem of charging the parties in one proceeding with notice of the contents of the record in another proceeding without giving the parties in the second proceeding a clear opportunity to respond to the incorporation of the other record, which was dealt with in *Public Service Comm'n* v. *FPC*, No. 71-1828 (D.C. Cir., Aug. 24, 1973) (Texas Gulf Coast Area Rate Cases), is not presented on this record.

is on this record, that the main line flows are across a state line, it is irrelevant whether any of the gas diverted from that main-line stream ever gets across a state line.[28]

CONCLUSION

For the foregoing reasons the multiple petitions for a writ of certiorari should be denied.

Respectfully submitted,

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[28] Text, *supra*, at 9-10.

APPENDIX A

INTERSTATE FLOWS IN NEW ORLEANS DISTRICT FACILITIES (Mcf)

Point	Annual	Peak Days	
	1969[1]	1970[2]	1971[3]
I	3,286,407	55,929	72,737
J	2,119,631	16,437	0
K	13,481	0	0
L	38,117,707	15,744	64,017
M	2,055,759	64,868	52,762
X	157,426	145	77
Total	45,750,411	153,123	189,593

[1] Ex. 2, p. 2, R. 107, 1321; Ex. Z-1 to United's Application, R. 2045.

[2] Item E, R. 558, 1651.

[3] Report filed pursuant to § 260.8 of the FPC's Regulations under the Act.

APPENDIX B

INTERSTATE FLOWS IN LAFAYETTE DISTRICT FACILITIES (Mcf)

Point	Annual 1969[1]	Peak Days 1970[2]	Peak Days 1971[3]
A	0	0	105,173
B	1,371,681	1,370	1,046
C	24,254,556	58,399	1,075
D	1,357,369	41,323	24,079
H	6,124,916	17,034	0
O	22,138,127	117,173	47,919
Total	55,246,649	235,299	179,292

[1] Ex. 2, p. 1; R. 107, 1320; Ex. Z-1 to United's Application, R. 2044.
[2] Item E, R. 558, 1648.
[3] Report filed pursuant to § 260.8 of the FPC's Regulations under the Act.